Remarks

The above Amendments and these Remarks are in reply to the Office Action mailed June 22, 2006. Claims 1 - 11 were pending in the Application prior to the outstanding Office Action. In the Office Action, the Examiner rejected claims 1 - 11. The present Reply amends claims 1, 3, 8 and 9, and adds new claims 12 - 22, leaving for the Examiner's present consideration claims 1 – 22. Reconsideration of the rejections is requested.

Objections

In item 2 on page 2, the disclosure was objected to due to certain informalities in the Specification at paragraphs [0014] and [0015]. Applicant herewith includes an amendment to paragraphs [0014] and [0015] to obviate the objection.

Rejections under 35 U.S.C. §101

In item 3 on page 2, claims 1 – 11 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Applicant herewith includes an amendment to claim 1 to obviate the rejection.

Having established that the claimed subject matter is within at least one of the statutory classes set forth in 35 USC §101, next it will be demonstrated that the recited elements provide a useful, tangible and concrete result. As stated in an example in the Specification (paragraph [0014]) claimed methods (systems and computer products) for dynamically generating code provide useful, tangible and concrete results of building efficient adapters and proxies:

> [0014] In one embodiment, the Java based automatic program code generator may be used to generate code for any type of Java program. The invention is especially useful when used to build efficient adapters and proxies. Applications of the Java automatic code

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generator include but are not limited to remote method invocation (RMI) skeletons, RMI stubs, wrappers for JDBC connections, and proxies used to enforce call-by-value semantics between EJBs, the latter of which are applied to copying parameters. Typically, the code implementing a proxy or adaptor is dynamically generated when the code is needed, such as when a remote method is invoked on a resource. However, the dynamic code generation of the present invention may occur at any time depending on the particular application and resource available. [emphasis added]

Accordingly, Applicant respectfully submits that the rejection of independent claims 1 is overcome. The remainder of the pending claims depends from claims 2 - 11 and incorporates these limitations by dependency. As such, the rejected dependent claims are patentable subject matter for at least the same reason.

Rejections under 35 U.S.C. §112

In item 5 on page 3, claims 1, 8 and 9 were rejected under 35 U.S.C. §112 as containing a trademark or trade name used in a claim as a limitation to identify or describe a material or product. Applicant herewith includes an amendment to these claims to obviate the rejection

Double Patenting

In item 7 on page 5, claims 1 – 10 were provisionally rejected on the ground of nonstatutory double patenting over claims 1 – 10 of copending Application No. 10/706,516 [sic] 10/712,384. A proper Terminal Disclaimer is timely filed concurrently herewith in an Appendix A. Additionally, copies of Recordation of Assignments for the present application 10/706,516 and commonly owned co-pending Application No. 10/712,384 are provided herewith in an Appendix B. Therefore, Applicant respectfully submits that the nonstatutory double patenting rejection of Claims 1 – 10 has been overcome.

PAGE 46/62 * RCVD AT 8/4/2006 6:24:05 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-2/19 * DNIS:2738300 * CSID:415 362 2928 * DURATION (mm-ss):16-28

Rejections under 35 U.S.C. §102

In item 9 on page 5, claims 1 – 9 were rejected under 35 U.S.C. §102(b) as being anticipated by Stapp et al. (Application No. 09/866,131). Applicant respectfully traverses.

As amended, claim 1 now recites:

1. (Currently Amended): A computer program product for execution by a server computer for automatically generating program code, comprising:

computer code for determining whether a resource is available; and

computer code for generating program code when the resource is determined to be available, wherein generating program code includes:

computer code for creating a class file container object;

computer code for adding a method to the class file object;

computer code for adding code to the method;

computer code for generating Java byte code for the class file container object; and

computer code for generate an instance of the new class file object.

Amended claim 1 distinguishes over conventional approaches such as Stapp at least by enabling code to be generated when a resource is available, which is now clearly recited by claim 1. Antecedent basis may be found at para. [0014] of the Specification:

> [0014] In one embodiment, the Java based automatic program code generator may be used to generate code for any type of Java program. The invention is especially useful when used to build efficient adapters and proxies. Applications of the Java automatic code generator include but are not limited to remote method invocation (RMI) skeletons, RMI stubs, wrappers for JDBC connections, and proxies used to enforce call-by-value semantics between EJBs, the latter of which are applied to copying parameters. Typically, the code implementing a proxy or adaptor is dynamically generated when the code is needed, such as when a remote method is invoked on a resource. However, the dynamic code generation of the present invention may occur at any time depending on the particular application and resource available. [emphasis added]

Stapp fails to teach such recited claim limitation and therefore does not anticipate the embodiments of claim 1. Further Stapp does not suggest or otherwise render obvious the embodiments claimed by claim 1 either alone or in any combination since Stapp's approach teaches

PAGE 47/62 * RCVD AT 8/4/2006 6:24:05 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-2/19 * DNIS:2738300 * CSID:415 362 2928 * DURATION (mm-ss):16-28

receiving rules from a user in order to generate code – there is nothing dynamic about it. Rather, Stapp teaches a manually invocable programmer's tool. Modifications to Stapp to become a dynamic code generator instead of a manual tool would either (1) render Stapp inoperable or (2) require modifications to Stapp's purpose as well as Stapp's principle of operation (see MPEP § 2143.01) because such modifications would NECESSARILY burden Stapp's system contrary to their stated purpose: a user input data driven program generator (Abstract).

Rejections under 35 U.S.C. §103

In item 11 on page 8, claims 10 and 11 were rejected under 35 U.S.C. §103(a) as being unpatentable over Stapp in view of Goodwin (Pat. No. 6,199,195). Applicant respectfully traverses.

Stapp's failure to teach, suggest or otherwise render obvious the embodiments recited by claim 1 were addressed above. Goodwin's logical model approach fails to remedy these previously discussed shortcomings of Stapp. Further, since claims 10 and 11 recite additional limitations upon the embodiments recited by claim 1, Goodwin and Stapp cannot render these embodiments obvious either.

Conclusion

In light of the above, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and a Notice of Allowance is requested. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

PAGE 48/62 * RCVD AT 8/4/2006 6:24:05 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-2/19 * DNIS:2738300 * CSID:415 362 2928 * DURATION (mm-ss):16-28

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

Date: August 4, 2006

By: _____
Paul A. Durdik
Reg. No. 37,819

Customer No. 23910
FLIESLER MEYER LLP
Four Embarcadero Center, Fourth Floor
San Francisco, California 94111-4156
Telephone: (415) 362-3800
Facsimile: (415) 362-2928

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APPENDIX A

Terminal Disclaimer

PAGE 50/62 * RCVD AT 8/4/2006 6:24:05 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-2/19 * DNIS:2738300 * CSID:415 362 2928 * DURATION (mm-ss):16-28

APPENDIX B

Copies of Recordation of Assignments

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RECORDATION DATE: 05/10/2004
REEL/FRAME: 015322/0416
NUMBER OF PAGES: 3

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).
DOCKET NUMBER: BEAS-1316US2

ASSIGNOR:
GALLAGHER, WILLIAM JOHN
DOC DATE: 04/12/2004

ASSIGNEE:
BEA SYSTEMS, INC.
2315 NORTH FIRST STREET
SAN JOSE, CALIFORNIA 95131

SERIAL NUMBER: 10706516
PATENT NUMBER:
TITLE: DYNAMIC CODE GENERATION SYSTEM
FILING DATE: 11/12/2003
ISSUE DATE:

Fliesler Meyer LLP
File: BEAS-01316US2
Action Item
Date Due
Docketed Date
Attorney Init. SRM/PAB
Docketed By: JCM
Verified By: mpt

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William John Gallagher

Additional name(s) of conveying party(ies) attached? _ Yes X No

2. Name and address of receiving party(ies):

Name: BEA Systems, Inc.

Address: 2315 North First Street
San Jose, California 95131

Additional name(s) & address(es) attached? __ Yes ✓ No

3. Nature of conveyance:

✓ Assignment — Merger
— Security Agreement — Change of Name
— Other _____

Execution Date: 04/12/04

4. Application number(s) or patent number(s):
A. Patent Application No.: 10/706,516
B. Confirmation No.: 7688
Title: DYNAMIC CODE GENERATION SYSTEM

Filed Date: 11/12/03

C. Patent No(s).:

Additional numbers attached? __ Yes ✓ No

If this document is being filed together with a new application, the execution date of the application is: ??

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Sheldon R. Meyer, Esq.

Address: Fliesler Meyer LLP

Four Embarcadero Center, Fourth Floor

San Francisco, CA 94111

Telephone: (415) 362-3800

6. Total Number of applications and patents involved: 1 X $40.00 each

7. Total fee (37 CFR 3.41).....$ 40.00

__ Check Enclosed

8. *Fee Authorization.* Authorization is given to charge any additional fees or credit any overpayment to Deposit Account No. 06-1325.
Copy. (A duplicate copy of this authorization is not enclosed.)

9. Statement and signature.
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Stephen R. Bachmann
Attorney (Reg. No.: 50,806)

Signature

May 5, 2004
Date

10. Total number of pages to be recorded: 3 (1 page cover sheet and 2 page document).

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SOLE TO CORPORATE ASSIGNMENT

WHEREAS, the undersigned, William John Gallagher, a resident of Easton, PA, (hereinafter termed "Inventor"), has invented certain new and useful improvements in:

DYNAMIC CODE GENERATION SYSTEM

and has executed a declaration or oath for an application for a United States patent disclosing and identifying the invention, said invention having been filed on the 12TH day of November, 2003, and assigned U.S. Patent Application No. 10/706,516.

WHEREAS BEA Systems, Inc. (hereinafter termed "Assignee"), a corporation of the State of Delaware, having a place of business at 2315 North First Street, San Jose, CA 95131, State of California, wishes to acquire the entire right, title and interest in and to said application and the invention disclosed therein, and in and to all embodiments of the invention, heretofore conceived, made or discovered by said Inventor (all collectively hereinafter termed "said invention"), and in and to any and all patents, certificates of invention and other forms of protection thereon (hereinafter termed "patents") applied for or granted in the United States and/or other countries.

NOW THEREFORE, for good and valuable consideration acknowledged by said Inventor to have been received in full from said Assignee:

1. Said Inventor does hereby sell, assign, transfer and convey unto said Assignee, the entire right, title and interest (a) in and to said application and said invention; (b) in and to all rights to apply in any and all countries of the world for patents, certificates of inventions or other governmental grants on said invention, including the right to apply for patents pursuant to the International Convention for the Protection of Industrial Property or pursuant to any other convention, treaty, agreement or understanding; (c) in and to any and all applications filed and any and all patents, certificates of inventions or other governmental grants granted on said invention in the United States or any other country, including each and every application filed and each and every patent granted on any application which is a division, substitution, or continuation of any of said applications; (d) in and to each and every reissue or extension of any of said patents; and (e) in and to each and every patent claim resulting from a reexamination certificate for any and all of said patents.

2. Said Inventor hereby covenants and agrees to cooperate with said Assignee to enable said Assignee to enjoy to the fullest extent the right, title and interest herein conveyed in the United States and other countries. Such cooperation by said Inventor shall include prompt production of pertinent facts and documents, giving of testimony, executing of petitions, oaths, specifications, declarations or other papers, and other assistance all to the extent deemed necessary or desirable by said Assignee (a) for perfecting in said Assignee the right, title and interest herein conveyed; (b) for complying with any duty of disclosure; (c) for prosecuting any of said applications; (d) for filing and prosecuting substitute, divisional, continuing or additional applications covering said invention; (e) for filing and prosecuting applications for reissue of any of said patents; (f) for interference or other priority proceedings involving said invention; and (g) for legal proceedings involving said invention and any applications therefor and any patents granted thereon, including without limitation opposition proceedings, cancellation proceedings, priority contests, public use proceedings, reexamination proceedings, compulsory licensing proceedings, infringement actions and court actions; provided, however, that the expense incurred by said Inventor in providing such cooperation shall be paid for by said Assignee.

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3. The terms and covenants of this Assignment shall inure to the benefit of said Assignee, its successors, assigns and other legal representatives, and shall be binding upon said Inventor, said Inventor's heirs, legal representatives and assigns.

4. Said Inventor hereby warrants and represents that said Inventor has not entered and will not enter into any assignment, contract, or understanding in conflict herewith.

IN WITNESS WHEREOF, the said Inventor has executed this instrument on the date as given below and delivered this instrument to said Assignee:

4-12-2004
Date

William John Gallagher

State of New Jersey)
)
County of Hunterdon)

On April 12, 2004 before me, Linda Boutillier, Executive Assistant
(name and title of officer)

personally appeared William John Gallagher, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Linda Boutillier

****

LINDA BOUTILLIER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 26, 2004

Attorney Docket No.: BEAS-1316US2
SBachmann/BEAS/1316US2/1316US2.204.assignment.wpd

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REEL/FRAME: 015322/0379
NUMBER OF PAGES: 3

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).
DOCKET NUMBER: 23910

ASSIGNOR:
GALLAGHER, WILLIAM JOHN
DOC DATE: 04/12/2004

ASSIGNEE:
BEA SYSTEMS, INC.
2315 NORTH FIRST STREET
SAN JOSE, CALIFORNIA 95131

SERIAL NUMBER: 10712384
FILING DATE: 11/12/2003
PATENT NUMBER:
ISSUE DATE:
TITLE: DYNAMIC CODE GENERATION METHOD

Fliesler Meyer LLP
File. BEAS-01316 US3
Action Item
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Critical Date
Attorney Path SRM/PAP
Docketed By JCM
Verified By MM, mmk

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William John Gallagher

Additional name(s) of conveying party(ies) attached? _ Yes X No

2. Name and address of receiving party(ies):

Name: BEA Systems, Inc.

Address: 2315 North First Street
San Jose, California 95131

Additional name(s) & address(es) attached? __ Yes ✓ No

3. Nature of conveyance:

✓ Assignment — Merger
— Security Agreement — Change of Name
— Other _____

Execution Date: 04/12/04

4. Application number(s) or patent number(s):
A. Patent Application No.: 10/712,384
B. Confirmation No.: 9603
Title: DYNAMIC CODE GENERATION METHOD

Filed Date: 11/12/03

C. Patent No(s).:

Additional numbers attached? __ Yes ✓ No

If this document is being filed together with a new application, the execution date of the application is: _____

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Sheldon R. Meyer, Esq.

Address: Fliesler Meyer LLP

Four Embarcadero Center, Fourth Floor

San Francisco, CA 94111

Telephone: (415) 362-3800

6. Total Number of applications and patents involved: 1 X $40.00 each

7. Total fee (37 CFR 3.41).....$ 40.00

— Check Enclosed

8. *Fee Authorization.* Authorization is given to charge any additional fees or credit any overpayment to Deposit Account No. 06-1325.
Copy. (A duplicate copy of this authorization is not enclosed.)

9. Statement and signature.
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Stephen R. Bachmann
Attorney (Reg. No.: 50,806)

Signature

May 5, 2004
Date

10. Total number of pages to be recorded: 3 (1 page cover sheet and 2 page document).

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SOLE TO CORPORATE ASSIGNMENT

WHEREAS, the undersigned, William John Gallagher, a resident of Easton, PA, (hereinafter termed "Inventor"), has invented certain new and useful improvements in:

DYNAMIC CODE GENERATION METHOD

and has executed a declaration or oath for an application for a United States patent disclosing and identifying the invention, said invention having been filed on the 12TH day of November, 2003, and assigned U.S. Patent Application No. 10/712,384.

WHEREAS BEA Systems, Inc. (hereinafter termed "Assignee"), a corporation of the State of Delaware, having a place of business at 2315 North First Street, San Jose, CA 95131, State of California, wishes to acquire the entire right, title and interest in and to said application and the invention disclosed therein, and in and to all embodiments of the invention, heretofore conceived, made or discovered by said Inventor (all collectively hereinafter termed "said invention"), and in and to any and all patents, certificates of invention and other forms of protection thereon (hereinafter termed "patents") applied for or granted in the United States and/or other countries.

NOW THEREFORE, for good and valuable consideration acknowledged by said Inventor to have been received in full from said Assignee:

1. Said Inventor does hereby sell, assign, transfer and convey unto said Assignee, the entire right, title and interest (a) in and to said application and said invention; (b) in and to all rights to apply in any and all countries of the world for patents, certificates of inventions or other governmental grants on said invention, including the right to apply for patents pursuant to the International Convention for the Protection of Industrial Property or pursuant to any other convention, treaty, agreement or understanding; (c) in and to any and all applications filed and any and all patents, certificates of inventions or other governmental grants granted on said invention in the United States or any other country, including each and every application filed and each and every patent granted on any application which is a division, substitution, or continuation of any of said applications; (d) in and to each and every reissue or extension of any of said patents; and (e) in and to each and every patent claim resulting from a reexamination certificate for any and all of said patents.

2. Said Inventor hereby covenants and agrees to cooperate with said Assignee to enable said Assignee to enjoy to the fullest extent the right, title and interest herein conveyed in the United States and other countries. Such cooperation by said Inventor shall include prompt production of pertinent facts and documents, giving of testimony, executing of petitions, oaths, specifications, declarations or other papers, and other assistance all to the extent deemed necessary or desirable by said Assignee (a) for perfecting in said Assignee the right, title and interest herein conveyed; (b) for complying with any duty of disclosure; (c) for prosecuting any of said applications; (d) for filing and prosecuting substitute, divisional, continuing or additional applications covering said invention; (e) for filing and prosecuting applications for reissue of any of said patents; (f) for interference or other priority proceedings involving said invention; and (g) for legal proceedings involving said invention and any applications therefor and any patents granted thereon, including without limitation opposition proceedings, cancellation proceedings, priority contests, public use proceedings, reexamination proceedings, compulsory licensing proceedings, infringement actions and court actions; provided, however, that the expense incurred by said Inventor in providing such cooperation shall be paid for by said Assignee.

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3. The terms and covenants of this Assignment shall inure to the benefit of said Assignee, its successors, assigns and other legal representatives, and shall be binding upon said Inventor, said Inventor's heirs, legal representatives and assigns.

4. Said Inventor hereby warrants and represents that said Inventor has not entered and will not enter into any assignment, contract, or understanding in conflict herewith.

IN WITNESS WHEREOF, the said Inventor has executed this instrument on the date as given below and delivered this instrument to said Assignee:

4-12-2004
Date

William John Gallagher

State of New Jersey)
)
County of Hunterdon)

On April 12, 2004 before me, Linda Boutillier, Executive Assistant
(name and title of officer)

personally appeared William John Gallagher, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Linda Boutillier

****

LINDA BOUTILLIER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 26, 2004

Attorney Docket No.: BEAS-1316US2
SBachmann/BEAS/1316US2/1316US3.204.assignment.wpd

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